



**Statement of Robert Nielsen  
on behalf of the  
National Association of Home Builders**

**Before the Subcommittee on Financial Institutions and  
Consumer Credit**

**United States House of Representatives  
Washington, DC**

**May 2, 2001**



Good morning Chairman Bachus and members of the subcommittee. My name is Bob Nielsen and I am President of Shelter Properties a company, which builds and owns multifamily housing properties. I am pleased to be here today to express the views of the 203,000 members of the NAHB on a proposal by the Federal Reserve Board and United States Treasury Department to permit financial holding companies and financial subsidiaries of national banks to act as real estate brokers and managers.

Mr. Chairman, in sum we oppose this proposal because the real estate brokerage and management activities are commercial in nature, anticompetitive and would adversely affect consumers.

## **Background**

The Federal Reserve Board and the United States Treasury Department have jointly requested public comment on a proposal to permit financial holding companies and financial subsidiaries of national banks to act as real estate brokers and managers. The rule would determine that real estate brokerage and management services are financial in nature or incidental to financial activity and are, therefore, permissible activities for financial holding companies and financial subsidiaries of national banks.

The Gramm-Leach-Bliley (GLB) Act amended the Bank Holding Company and National Bank Act to allow a bank holding company that qualifies as a “financial holding company,” and financial subsidiaries of national banks (with certain exceptions), to engage in a broad range of activities that are defined by the GLB Act to be financial in nature. The GLB Act also permits financial holding companies and financial subsidiaries of national banks to engage in other activities that the Federal Reserve Board determines, by regulation or order and in consultation with the Secretary of Treasury, to be financial in nature or incidental to a financial activity. This latter provision is the basis for the proposal.

Neither real estate brokerage nor real estate management was permitted for bank holding companies or national banks under previous law or regulation. However, the agencies state that the GLB Act’s “financial in nature or incidental” test is broader than the former “closely related to banking” standard.

NAHB strongly believes that financial holding companies and national bank subsidiaries should not be permitted to engage in these activities. Both real estate management and real estate brokerage are inherently commercial, not financial activities or incidental to a financial activity, and therefore are not legally permissible for financial holding companies or national bank subsidiaries. Furthermore, allowing banking organizations to engage in either real estate management or brokerage activities would harm consumers as well as real estate managers and brokers that are not affiliated with banking organizations.

## Real Estate Management Services

Real estate management services are inherently commercial activities.

The term real estate management applies to a broad range of activities involved in the day-to-day management of real estate, including:

- preparing and overseeing marketing plans;
- finding tenants;
- negotiating leases and lease renewals;
- developing operating and capital budgets;
- preparing maintenance and repair schedules;
- purchasing equipment, materials and supplies;
- supervising employees or contractors that perform repair, maintenance and landscaping work;
- inspecting properties;
- handling payrolls of employees involved in management activities;
- collecting rents;
- making principal, interest, insurance and tax payments;
- holding security deposits;
- preparing property reports, records and financial statements;
- handling a range of legal proceedings;
- monitoring compliance with federal, state and local regulations; and,
- obtaining required licenses and permits.

Frequently, firms with property management operations also engage in real estate investment and development.

While some of these activities involve the handling of money, most do not, and all relate to the day-to-day operation of a commercial enterprise. In fact, any financial activity that occurs in connection with the management of real estate is incidental to the commercial real estate activity. If such endeavors were to be classified as financial or incidental to a financial activity, then it is difficult to see what business activities would not fall under such a heading. We do not believe that this is the type of distinction that Congress intended in their decision in the Gramm-Leach-Bliley Act to maintain a clear separation between banking and commerce. Real estate management activities are primarily commercial in nature and, therefore, cannot legally be open to financial holding companies or national bank subsidiaries.

The involvement of banking organizations in real estate management would create an unfair competitive environment for real estate management firms not affiliated with banks.

Allowing financial holding companies and national bank subsidiaries to engage in real estate management activities would deprive the current participants of this industry

of their rights to compete in the marketplace without undue influence by banking entities. There would be several distinct problems stemming from conflicts of interest that banking organizations would face in financial decision-making related to real estate management activities. First of all, real estate management entities seeking bank financing are required to disclose proprietary data on rental market conditions and projections, business plans, and data on specific properties, including lease terms and schedules. This would be a particularly sensitive situation for a real estate development firm that has a property management unit, in that data on both development and management operations could be required to support loan decisions. Such information, if shared by the bank with its property management affiliate, could give that entity a tremendous competitive edge over other property management firms in the market. The bank real estate management unit could factor such information into its planning and operations to benefit the properties it manages at the expense of others in the market. For example, the bank property management unit could target marketing efforts to residents with expiring leases in units managed by the loan applicant, using information obtained on the lease terms and conditions of those residents.

Conflicts of interest for banks with property management affiliates also could arise in the process of making financing and other decisions involving companies with competing property management operations. Banks may be unwilling to provide financial services, including loans, to competitors, or may provide such services at terms that are less attractive than those extended to its property management affiliate. In addition, there is the possibility that banks could make the use of its real estate management services an explicit or implied condition for approval of a loan to a property developer or owner.

Bank-affiliated property management firms could also price their services below market as a “loss-leader” to attract demand deposit and other business from property owners, again putting unaffiliated companies at a competitive disadvantage.

## **Real Estate Brokerage**

Real estate brokerage activities are also inherently commercial in nature.

Real estate brokerage involves bringing together parties for the purpose of accomplishing a real estate purchase, sale, exchange, lease or rental transaction. Activities include:

- negotiating contracts on behalf of one or more of the parties in the transaction;
- making listing and marketing arrangements;
- locating buyers, sellers, lessors, and lessees;
- collecting and holding earnest money deposits;
- providing and conveying information for one or more parties in the transaction;
- providing advice to one or more of the parties in the transaction; and,
- participating in the closing of the transaction.

While the sale and purchase of properties involves financial transactions, real estate brokers are not the primary participants in that aspect of the process. Real estate brokers provide services that facilitate the transfer of tangible assets, which are associated with commercial activities, not intangible assets, which define financial transactions. As with real estate management services, the financial components of real estate brokerage are incidental to the commercial elements and classifying the activity as financial or incidental to a financial activity would lead to the inclusion of virtually every service enterprise in that category. Real estate brokerage, therefore, is fundamentally a commercial endeavor and financial holding companies and national bank subsidiaries are not legally entitled to engage in such activities, which clearly do not satisfy the test of financial or incidental to a financial activity.

The involvement of banking organizations in real estate brokerage would have adverse consequences for consumers.

It has been argued that “one-stop” shopping in real estate purchase/sales transactions is beneficial for consumers. However, we have found no evidence to support this contention. In fact, NAHB believes that there are significant risks that consumers utilizing brokers affiliated with banking organizations could incur higher costs in their real estate transactions. A key problem with the vertical integration of brokerage services in banking organizations is that consumers utilizing such services would not have access to the independent source of information they have in using an independent real estate broker. Without fuller information, there would exist the strong possibility that consumers would incur higher than necessary costs for their real estate transactions. Furthermore, consumers might believe they would not be approved for financing of their real estate purchase if they do not use the brokerage and other services of affiliates of the banking organization.

## **Conclusion**

NAHB believes that both real estate management and brokerage are primarily commercial activities and are, therefore, not legally permitted for financial holding companies and national bank subsidiaries, even under the broader standard of “financial in nature or incidental to a financial activity” that was established in the Gramm-Leach-Bliley Act. In addition, we believe that permitting banking organizations to undertake real estate management and brokerage activities would unfairly alter the competitive marketplace and unnecessarily increase costs for consumers.